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STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

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INDIANA UTILITY REGULATORY COMMISSION  
GENERAL COUNSEL

IN THE MATTER OF THE COMMISSION'S )  
PROPOSED RULEMAKING CONCERNING )  
CUSTOMER SERVICE RIGHTS AND ) IURC RM #04-02  
RESPONSIBILITIES FOR ELECTRIC, GAS, )  
WATER, SEWER AND )  
TELECOMMUNICATIONS UTILITIES )

**COMMENTS OF THE INDIANA  
TELECOMMUNICATIONS ASSOCIATION**

The Indiana Telecommunications Association ("ITA")<sup>1</sup>, by its undersigned counsel, submits its initial comments with regard to the above-captioned rulemaking regarding proposed amendments to certain existing telecommunications customer service rights and responsibilities ("CR&R") rules.

Attached hereto as Exhibit "A" are the ITA's recommended modifications to the Commission's proposed amendments to the telecommunications CR&R rules, as exemplified in its comments set forth below.<sup>2</sup> The ITA's recommended deletions are set forth in italicized strikethroughs, while the ITA's recommended additions are depicted with underlinings.

**170 IAC 7-1.3-2 Definitions.**

**1. Definitions of "Applicant" (170 IAC 7-1.3-2(1) and "Customer" (170 IAC 7-1.3-2(7)).**

<sup>1</sup> The ITA is a trade group/association that has represented the interests of the telecommunications industry in Indiana for over 100 years. The ITA's membership consists, in part, of forty (40) incumbent local exchange telecommunications carriers providing telephone service to their customers in Indiana comprising approximately 3.3 million access lines.

<sup>2</sup> The ITA's recommended modifications have been applied to the Commission's reformatted version of the proposed rules as published in the *Indiana Register* on September 1, 2004. The format of the Commission's proposed rules contained in its initial Notice of Proposed Rulemaking, dated July 21, 2004, was not used.

The respective definitions of “applicant” and “customer” should be modified so as to apply and be limited to residential customers only.

Rules 2(1) and 2(7) retain the existing definitions for these two terms so as to apply to both residential telephone service and small business telephone service (operating with 4 or fewer single access lines). In contrast, the CR&R rules for all other utilities covered by the Commission’s proposed rulemaking (gas, water, electric, and sewage disposal service) are expressly limited in application to residential customers in terms of the definitions of “applicant” and “customer”. (See, 170 IAC 4-1.2-2(1) and (3) for electric utility service; 170 IAC 5-1.2-2(1) and (3) for gas utility service; and 170 IAC 6-1.2-2(1) and (3) for water utility service. See also, 170 IAC 8.5-1-1 as to sewage disposal services, providing that the rules related to a sewage disposal company with regard to creditworthiness; deposits; disconnection of service; and complaints and review define the term “customer” to mean “persons who have agreed to pay for such service exclusively for residential purposes.”)

Restricting the scope and application of all CR&R rules to solely residential service customers is sound from a regulatory standpoint and would provide consistency among the utilities subject to such rules. Residential customers are traditionally thought to be less able to protect their individual respective interests insofar as the provision of utility services are concerned, while businesses and institutions tend to command more resources and personnel to maintain and protect their operations with regard to utility service. Businesses also have the ability to work together through voluntary associations such as the various chambers of commerce, as well as industry associations, such that even small businesses through their cooperative efforts may have a large presence in the development of utility policy. The

Commission's exclusion of businesses from the scope and application of the proposed CR&R rules for gas, water, electric, and sewage disposal service evinces these realities.

**2. New Definition – “Direct Debit Payment Option”.**

The ITA proposes the insertion of a definition for a new term of “direct debit payment option” as 170 IAC 7-1.3-2(9) in light of the use of this term in the ITA's proposed modifications to various provisions of the telecommunications CR&R rules set forth below.

Under this option, an applicant or customer may be afforded additional flexibility to meet deposit or payment requirements for telephone service. In lieu of making a deposit, for example, the applicant or customer could authorize the LEC to directly debit the monthly charge due for service from the applicant's or customer's bank or credit card as necessary.

**3. Definition of “Disconnection” (170 IAC 7-1.3-2(9)).**

The definition of the term “disconnection” should be modified slightly to mean “*any* termination or discontinuance of utility service” (emphasis added). Such modification is warranted to ensure that temporary disconnections of a customer's telephone service are included within this definition. Applicable provisions within the deposit rule for telecommunications services (170 IAC 7-1.3-3) address situations where an existing customer has been temporarily disconnected for non-payment of service. (See, for example, 170 IAC 7-1.3-3(g)(2)). Accordingly, this definition should be modified in this manner to maintain consistency with other applicable CR&R rules.

**4. Definition of “Late Payment Charge” (170 IAC 7-1.3-2(11)).**

The proposed new definition of “late payment charge” should also be modified to make clear that such charge may be assessed by a utility on a customer's account *each time* the account becomes delinquent. Absent this modification, the Commission's use of the words “one-time

penalty” within the proposed definition would convey the unintended meaning that an LEC could assess a late payment charge only once at the initial time a customer’s account becomes delinquent, but would not be capable of ever assessing a late payment charge again in the event the customer was delinquent on subsequent billings. The ITA’s proposed clarification to this proposed definition is therefore warranted.

**170 IAC 7-1.3-3 Creditworthiness of residential customer; deposit; refund.**

**1. Credit History of any Other Individual Residing in the Household of the Applicant or Customer’s Spouse (170 IAC 7-1.3-3(a)(2)(B)).**

The Commission’s proposed rule provides that a LEC shall determine the creditworthiness of applicants or customers in an equitable and nondiscriminatory manner solely upon the credit risk of the individual applicant or customer without regard to the credit history of any other individual living in the household of the applicant or the customer’s spouse.

The ITA’s proposed modification would provide for an exception to this proposed rule for an individual living in the same house *other than* the applicant or customer and who is proven to have incurred an unpaid bill for telephone service at the same address, or is demonstrated to be an active user on an existing account at the same address for which payment has not been made. In such cases, that individual’s credit history is highly relevant and should be considered in granting new service. The ITA respectfully submits that this proposed modification is necessary in order to prevent and/or deter any attempts by such individuals to avoid payment of undisputed bills by placing service at the same location in another person’s name.

The ITA proposes a second modification to provide that a surviving spouse of a deceased customer shall be able to utilize the good credit of the deceased spouse when transferring service

to the survivor's name for a particular household or location. Such an addition would ameliorate situations where a surviving spouse has no individual credit history and would thereby ensure the ability of such spouse to obtain (or retain) telephone service in his or her own name.

**2. Establishment of Financial Responsibility (Creditworthiness) (170 IAC 7-1.3-3(b)).**

The Commission proposes a new Rule 3(b) to address the LEC's entitlement to require a residential customer to establish his or her financial responsibility. The ITA would respectfully submit that this proposed rule be modified to provide that the applicant or customer may be required to provide sufficient documentation to a LEC in order to establish the identity of that applicant or customer. This is an appropriate requirement to incorporate into the rules with regard to establishing financial responsibility and/or credit-worthiness in order to help avoid identity fraud.

Second, the ITA respectfully submits that a LEC should be entitled to require a deposit or other reasonable guarantor for securing the payment of bills before rendering service where the applicant or customer has failed to pay for past due telephone service in any state within the past six (6) years. The Commission's proposed Rule 3(b)(2) would implicitly limit such consideration by the LEC to only in-state service and explicitly limit the time period to four (4) years. Applicants or customers should not be permitted to indiscriminately incur debts for telephone service in one state and then move to another state and obtain telephone service from another LEC without being required to make a deposit or other guarantee of payment, given the applicant's or customer's demonstrated history of not paying for telephone service wherever they may have resided. The LEC's ability to look back six (6) years with regard to delinquent telephone service generally comports with the applicable six-year statute of limitations in Indiana

for collection of monies due on account. (See, IC 34-11-2-7(1)). In lieu of a deposit or other reasonable guarantor, the ITA's proposed modifications to this proposed rule also provide for the LEC to offer the customer the alternative to be enrolled in a "direct debit payment option" as defined above and further described below.

**3. Transfer of Bill for One Class of Service to Another Class of Service (170 IAC 7-1.3-3(c)).**

The Commission's proposed new Rule 3(c) provides that a bill for one class of service (such as for commercial service) should not be transferred to a bill for another class of service (such as residential service). The ITA respectfully submits that this proposed rule be modified to provide that if the owner of a sole proprietorship or a member of a partnership, whose business has an unpaid final bill, and applies for residential service, such application shall be held until the unpaid final proprietorship or partnership bills are paid in full. This is a warranted modification to this proposed rule based on ITA's member companies' collective experience with such failed types of businesses. A former sole proprietor or partner who has an unpaid final bill is the same person or individual who later applies for residential telephone service. These same individuals apply for and receive residential telephone service despite outstanding delinquency on disconnected service to the unincorporated business enterprises owned and controlled exclusively by that individual (in the case of a proprietorship) or in which the individual participated fully in the enterprise's management and who is personally liable for its debts (in the case of a partnership). The individual should not be entitled to obtain residential local exchange service until the unpaid final bill of that individual's proprietorship or partnership has been paid in full, since it is the same individual later applying for residential telephone service who is responsible for the failure to pay that unpaid final bill in the first place.

**4. Installment arrangements for high deposit requirements (170 IAC**

**7-1.3-3(d)).**

The Commission's proposed Rule 3(d) provides for an applicant or customer to make a reasonable deposit in the event that the applicant or customer fails to establish that he or she is creditworthy. The Commission proposes to allow an applicant or customer with a deposit requirement of greater than one hundred fifty dollars (\$150.00) to pay such deposit in equal installment payments over a period of no fewer than three (3) months and allow for service to be connected after the first installment payment has been made by the prospective applicant or customer. The ITA respectfully submits that the Commission should abandon this proposed amendment to the rule.

Collecting deposits on an installment basis over time would require significant and expensive alterations to the member ITA companies' billing systems. Moreover, permitting extended installments on large deposit requirements unfairly shifts the risk (and the burden of nonpayment) onto the shoulders of the LEC instead of the customer, where such burden should properly reside.

While the Commission's existing rules have countenanced installment payment arrangements by the customer with the LEC in delinquency situations involving *past due, unpaid* bills for local service (see, Rule 10(a)(2)(E)), such situations are vastly different from those situations where a high deposit is required *in order to receive service*. In delinquency situations with current customers, the LEC has previously addressed the creditworthiness of that customer, including possible deposit requirements, and maintains an existing relationship with that customer. Allowing installment arrangements to pay outstanding balances due promotes the ability of the *existing* customer to stay on the network of the LEC. In contrast, in an initial

deposit situation, the applicant or customer is for all practical purposes a “stranger” to the LEC and has demonstrated that they are *not* creditworthy, thereby enhancing the likelihood that such an individual may be unable to pay for the service that person is requesting be provided to him or her. Shifting the risk for nonpayment immediately to the shoulders of the LEC in such initial high deposit situations (by permitting installment payment arrangements by the applicant to the LEC) hampers the LEC’s ability to meet its statutory mandate to furnish reasonably adequate service and facilities at just and reasonable rates. (See, I.C. 8-1-2-4). Accordingly, this segment of the Commission’s proposed Rule 3(d) should be deleted.

**5. Provisions in Lieu of a Deposit– Direct Debit Payment Option (170 IAC 7-1.3-3(d)(1),(f) and (g)).**

The ITA proposes a new Rule 3(d)(1) to allow the LEC the choice of offering the applicant or customer a direct debit payment option (“DDPO”) in lieu of a deposit requirement. The DDPO enables a LEC to directly debit the monthly charges for service from the applicant’s or customer’s bank or credit card account as necessary. The DDPO thus offers a viable solution for those customers facing a high deposit requirement. The DDPO ensures that the LEC receives payment for services to be rendered and eliminates the need for a customer to make an immediate cash deposit in order to receive local service. This option provides customers with an additional method of opening an account if a deposit requirement would impose a burden on the customer to establish new service. At the same time, the DDPO would place the risk for nonpayment for services rendered upon the customer where such burden should rest, and not upon the LEC.

Aside from incorporating additional provisions for the direct debit payment option in the provisions of proposed rules 3(f) and (g), the ITA respectfully submits that the words “and



exhausted” added by the Commission to subsection (g) should be deleted inasmuch as deposits for telecommunication services are not “exhausted” until a customer’s permanent removal from the LEC’s network. As noted in the Commission’s current Rule 3(j)(3)(A), deposits plus accrued interest are applied to a customer’s *final* bill upon *termination* of service.

**6. Application of Deposits to Customer’s Bill (170 IAC 7-1.3-3(k)).**

The Commission’s proposed rulemaking would establish a new subsection (k) that would not permit the application of a deposit to satisfy an applicant or customer’s bill, prior arrearage, or an outstanding indebtedness that is greater than four years old, but would allow a LEC to pursue such unpaid balances through collections or other means as may be provided by applicable law.

The ITA respectfully submits that subsection (k) should be deleted in its entirety. A number of the member companies cannot implement this provision because indebtedness is classified by these companies as either short term (i.e., less than 12 months) or long term (i.e., greater than 12 months). Thus, major system changes would be required to implement this proposed provision. Further, Rule 3(k) is premised upon the false assumption that a LEC will avail itself of access to the deposit of a customer to pay a delinquency on such customer’s account. Under 170 IAC 7-1.3-3(j)(7), a deposit may be used by the LEC to cover any unpaid balances owed the LEC *only following disconnection* of any service under 170 IAC 7-1.3-11. Proposed Rule 3(k) implicitly would allow application of a deposit to existing indebtedness of a *current* customer’s bill. Thus, Rule 3(k) would be inconsistent with the existing provisions in 170 IAC 7-1.3-3(j)(7) and should therefore be deleted.

**7. Refund of Interest on Deposits (170 IAC 7-1.3-3(l)).**

The Commission's proposed Rule 3(l) would establish a new provision that requires that at the end of every year of telephone service, if the deposit plus interest has not been refunded to the customer, the LEC shall automatically refund the accrued interest on the deposit to the customer by crediting the customer's account, stating this credit clearly on the customer's next regular bill.

Section (l) should be deleted because it would require significant costly upgrades to telephone companies' systems in order to implement such a provision. Given low interest rates and the relatively small deposits that are being collected by LECs from customers (since anticipated toll charges are no longer included in the calculation), the administrative costs to the LEC would far outweigh the amounts expected to be refunded to the customer under this proposed provision. The overall cost to the LECs in implementing such a provision would be far more onerous when compared to what would be realized in terms of a refund of annual accrued interest to the customer. Furthermore, while a customer currently does not annually receive a refund of the minimal amounts of interest on an existing deposit, such interest is nonetheless earned by that customer on his or her account as now provided by Rule 3(h). Such interest inures to the customer's benefit through either a full refund (plus all accrued interest) on such deposit when made by the LEC to that customer, or as the LEC may thereafter apply such deposit (plus all accrued interest) to any outstanding indebtedness on the customer's final bill.

**170 IAC 7-1.3-8 Customer Complaints to the Utility.**

**1. Assessment of Late Payment Charge Pending Investigation of Customer Complaint of a Billing (170 IAC 7-1.3-8(b)(5)).**

The Commission's proposed amendment to existing Rule 8(b)(5) would provide that the utility shall not assess any late payment charge that may have accrued while an investigation was

pending on an applicant or customer complaint as to a disputed portion of their billing. The ITA respectfully submits that this amendment should be revised to provide that any late payment charges that may have been assessed while such an investigation is pending shall be adjusted accordingly upon resolution of the dispute.

For most companies, there is no process in place in the billing system to prevent the late payment charge from being assessed during such an investigatory period and to create such a process would involve complex, expensive modifications. If the customer prevails in the dispute, the charge will be credited by the LEC to the customer's account. If the customer does not prevail, the late payment charge should be appropriately assessed to the customer and remain as part of the balance due on their billing. The customer should not be able to avoid late payment charges by just disputing bills. The Commission's proposed amendment would encourage such actions by the customer. Should the LEC prevail in any such dispute, any late payment charge that would have been otherwise assessed where no dispute has been made by a customer, is properly owing and should be paid. The ITA's proposed modification to this particular segment of the rule allows for the late payment charge being credited to the customer's account when the customer has prevailed and ensures that the customer shall be equitably treated.

**2. The Utility's Proposed Disposition of the Applicant or Customer's Complaint (170 IAC 7-1.3-8(b)(6)).**

In the case of a utility's proposed disposition of a customer complaint not in the applicant or customer's favor, the Commission's proposed amendment to Rule 8(b)(6) would require a utility's personnel to inform the applicant or customer, if they express dissatisfaction with the decision, of the right to have the problem considered and acted upon by "supervisory personnel"

of the utility. The Commission's proposed amendment would provide that a utility should further direct such supervisory personnel to notify the applicant or customer of their right to have the problem reviewed by the Commission's Consumer Affairs Division and furnish that customer with the business address and telephone number of the Commission.

The ITA's proposed modifications to the proposed amendments to Rule 8 better reflect the current practice in the industry that has functioned well. It is in the best interests of customers and companies alike that utility service representatives are empowered to handle customer inquiries and complaints to completion. While customers certainly retain the right to bring a complaint before the Commission if they are dissatisfied with the initial decision of the utility, micromanagement of this process is not necessary. While customers should certainly be given the right to speak to the supervisor of a service representative in proper circumstances, requiring further involvement of the supervisor in this process is wholly unnecessary.

#### **170 IAC 7-1.3-9 Customer Complaints to the Commission.**

##### **1. Time Frames for Informal Review of Customer Complaints (170 IAC 7-1.3-9(e)(2) and (f)).**

The Commission's proposed modifications to existing Rule 9 for the informal review of a decision of the Consumer Affairs Division by its Director or designee would provide that such a review be conducted and completed "in a timely manner" rather than within thirty (30) days of receiving such a request, as is the requirement under the current rule.

The ITA respectfully submits that there should be a specific set of time frames for resolving such an informal review. To the extent that the Commission finds 30 days to be insufficient, the ITA would not object to extending the time frame to 45 days, as exemplified in the ITA's proposed modification. However, regardless of the specific time frame specified, it is

important for both the customer as well as the LEC to have the assurance that this process will be completed within a specified period of time. There should be no element of uncertainty with respect to this process.

A proposed amendment to Rule 9(f) by the Commission would extend the time period for a customer to make a written request to the Commission to investigate the disposition of such an informal review from fourteen (14) to twenty (20) days of the division's notice of disposition. The ITA respectfully submits that the current time frame of 14 days is more than adequate. Moreover, Rule 9(f) should remain consistent with the 14-day time frame required for the customer initiating a written request for an informal review of the division's decision as set forth in 170 IAC 7-1.3-9(e)(1) which the Commission's proposed rulemaking does not alter. It is vitally important to the LECs that the review process continue to move along. Extending the current time frame set forth in Rule 9(f) unnecessarily allows for undisputed charges that are unpaid to build up in the customer's account to the detriment of the LEC.

## **2. Extension of Time Frames for Review (170 IAC 7-1.3-9(h)).**

The Commission proposes a new Rule 9(h) that would provide for the time frames set forth in Rule 9 to be extended at the discretion of the Consumer Affairs Division. The ITA respectfully submits that a modification to this proposed rule should be made to permit the extension of such time frames only to the extent that the delay in resolving any customer's complaint has been caused by the LEC. Extensions without good cause shown for granting them are not fair to either the customer or the LEC. If all requisite information is timely provided by the LEC to the Commission with regard to the customer and the complaint, then the time frames specified by this rule should be adequate for the Consumer Affairs Division to make its determination.

**170 IAC 7-1.3-10 Customer payments.**

**1. Payment arrangements for outstanding balances of deniable charges (170 IAC 7-1.3-10(a)(1)).**

The Commission's proposed amendment to Rule 10(a)(1) would allow a customer to continue to receive telephone service from the LEC where the customer shows just cause for the inability to pay the deniable charges and the customer pays a "reasonable portion" of the outstanding balance of these charges in an amount not to exceed one-third (1/3) of all such amounts due (unless the customer agrees to pay a greater portion). These proposed amendments would alter the existing Rule 10(a) that requires customer payment in these circumstances of an amount not to exceed the greater of twenty dollars (\$20) or twenty-five percent (25%) of all amounts due for deniable charges.

The ITA respectfully submits that these proposed amendments should be modified in order to provide for a minimum payment amount of not less than twenty-five dollars (\$25) or one-third of the amounts due for deniable charges, whichever is greater, in such payment arrangements. Under the Commission's contemplated amendments, a LEC would be subject to unjustified administrative costs and expenses in setting up payment arrangements with a customer whose outstanding balance for deniable charges might be small. For example, under the Commission's proposal, a customer with an outstanding balance of deniable charges of \$4.50 would be entitled to require a LEC to set up a payment arrangement of \$1.50 per month over a period of three months in order to pay such deniable charges. To require a LEC to incur administrative costs and expenses that would foreseeably exceed the amount it would be collecting under such payment arrangements for deniable charges is wholly unwarranted and

should be avoided. A minimum specified amount should be required to be paid by the customer and such an amount should not be *De minimis* in nature.

In addition, the ITA respectfully submits that Rule 10(a)(1) should further provide that any payment commitments which are broken by the customer in these circumstances should subject that customer to the immediate suspension of his or her local telephone service.

**2. Payment arrangements under public assistance programs (170 IAC 7-1.3-10(a)(3)).**

The Commission proposes under a new Rule 10(a)(3) that the customer's payment arrangement reached with a LEC for outstanding balances of deniable charges shall provide the customer with adequate opportunity to apply for and receive the benefits of "any available public assistance program" (emphasis added). It appears that the Commission's proposed rule mirrors portions of an Indiana statute that applies to residential electric and gas service customers.

[There is no similar Indiana statutory provision that applies to residential (or business) telecommunications customers.] I.C. 8-1-2-121(b) permits an electric or gas utility residential customer whose account is delinquent to enter into an "amortization agreement" with an electric or gas utility to pay the delinquent account, but provides that "(s)uch an amortization agreement must provide the customer with adequate opportunity to apply for and receive the benefits of any available public assistance program." I.C. 8-1-2-121(b) contemplates such customers' access to public assistance programs such as the Low Income Home Energy Assistance Program (LIHEAP) which may be utilized by a delinquent account holder to obtain energy assistance benefits to retain residential electric or gas service. The statute allows the delinquent energy customer to modify the previous payment arrangements with the electric or gas utility to make those arrangements consistent with that customer's newly qualified low-income status. In

contrast, residential telephone customers do not have public assistance benefits such as LIHEAP to retain their telecommunications services.

With respect to basic local residential telephone service, however, applicants and customers alike may qualify for Lifeline/LinkUp services, which must be offered by an eligible telecommunications carrier (ETC) as set forth in the applicable FCC rules found at 47 C.F.R. § 54.401 *et seq.* As a consequence, the ITA submits that the language in proposed Rule 10(a)(3) should be modified to specifically refer to the availability of Lifeline/LinkUp programs for obtaining residential local telecommunications services. However, Lifeline programs provide for the payment of reduced telephone charges for local residential service on a prospective basis, and Linkup programs provide for a reduction of the telecommunications carriers' customary charge for commencing telephone service for a single telecommunications connection at a customer's principal place of residence. While the ITA submits that this proposed rule should be modified to only specifically refer to the available Lifeline/LinkUp programs, nonetheless it should be noted that unlike the LIHEAP energy assistance program, the existing Lifeline/LinkUp benefits do not apply to payment arrangements for past due arrearages for deniable charges. However, the monthly payment to be made by a residential customer to retain local telephone service (accounting for payment of past due arrearages as well as current local telephone charges) would be reduced to the extent that such a customer obtained federal Lifeline benefits thereby reducing their prospective, recurring local telephone charges.

**3. Payment arrangements for a change in the customer's financial circumstances (170 IAC 7-1.3-10(a)(4)).**

The Commission also proposes a new Rule 10(a)(4) which provides that the payment arrangement for outstanding balances on deniable charges is subject to amendment "upon the



customer's request" if there is a change in the customer's "financial circumstances." As with the comments relating to the public assistance programs set forth immediately above, it appears that this proposed provision has been taken from the same statute applicable solely to electric and gas utilities which permits an amortization agreement between a residential gas or electric customer with its utility to be amended on the customer's request "if there is a change in the customer's financial circumstances." (I.C. 8-1-2-121(b)). (Again, there is no similar Indiana statutory provision applicable to residential telecommunications customers.)

The ITA respectfully submits that the proposed rule as drafted is improperly open-ended and needs to be modified. A "change in the customer's financial circumstances" can be as serious as a residential customer's loss of employment or the onset of a physical disability. However, such phrase could also be open to wide interpretation. Its application could include circumstances such as a residential customer deciding to purchase a new automobile which thereby materially affects the customer's ability to meet his or her monthly budgeted expenses, including those payment arrangements previously made for payment of outstanding balances on deniable charges. The Commission's proposed rule could be construed to give the delinquent customer the right to negotiate a lower monthly payment on his/her outstanding arrearages simply because he decided to buy an expensive automobile. Clearly, the Commission did not intend this result. As a consequence, the ITA respectfully submits that such proposed rule should be modified to clarify that the modification of a payment arrangement may occur where there is a change in the customer's financial circumstances "outside the customer's control." This modification would allow for appropriate relief from prior payment arrangements in circumstances such as serious illness, disability or loss of employment by a customer.

**4. Payment arrangements – bundle or package service (170 IAC 7-1.3-10(a)(6)).**

The ITA respectfully proposes that an additional subsection 6 be incorporated into Rule 10(a) to addresses those situations where a customer has subscribed to a bundle or package service, including deniable charges, that is billed at one flat rate and the customer thereafter fails to pay for the billing for such bundle or package service. At present, when a residential customer makes a partial payment on a discounted bundle or package service, the partial payment is currently applied to local telephone service first. The services in the bundle or package are unbundled and the customer loses the benefit of the package or bundle discount. Thus, in subsequent bills the customer is subject to higher rates for these services individually than they would otherwise have paid under the bundle or package service arrangement. The increased charges may cause a more severe delinquency problem for the customer than if that customer faced the consequence of disconnection of its services at the time of initial default in the payment of the bundle or package service. The ITA's proposed subsection would provide that if the customer with a bundle or package service fails to pay, the LEC may, after serving proper notices provided in these rules, disconnect the customer.

**5. Reconnections (170 IAC 7-1.3-10(e) and (f)).**

The Commission proposes a new Rule 10(e) which would provide that the LEC shall reconnect service to a customer as soon as reasonably possible, but at least within one (1) "working" day after the LEC is requested to do so, if the customer has satisfied the requirements of this rule.

The subject of reconnection is currently addressed by the Commission's telecommunication rules at 170 IAC 7-1.3-12 and refers to a "business" day rather than a "working" day in computing reconnection time frames. To remain consistent, the ITA

respectfully submits that the proposed rule be modified to make clear that such reconnection applies solely to service that has been *temporarily* disconnected and that reconnection in those circumstances shall take place within in one (1) *business* day after the customer has made satisfactory payment arrangements. In those cases where a customer has been disconnected permanently from the network for nonpayment of services, the provisions of the existing Rule 12(b)(3) should continue to apply such that the rules for new installations of service as set forth in Rules 3 and 4 will apply.

With regard to the Commission's proposed new Rule 10(f), addressing reconnection charges, consistent with the comments immediately set forth above with regard to reconnection, the ITA respectfully submits that such proposed rule should be modified to make clear that reconnection charges for *temporary* disconnection shall not exceed the charge approved by the Commission in the LEC's filed tariffs. However, consistent with existing Rule 12 of the Commission's CR&R rules, which is not being modified by the Commission's proposed rulemaking, reconnection charges do not apply after the *final* disconnection of the customer from the LEC's network. Instead, charges for connection of new service or installation apply consistent with the current provisions set forth in Rule 12(b)(3).

**6. Application of Partial Payments (170 IAC 7-1.3-10(g)).**

The Commission proposes a new Rule 10(g) to address the application of partial payments from the customer toward any past due amount on a bill or on the balance due on a disconnection notice. The proposal would require that such partial payments be "apportioned" to past due regulated local service charges first; then to any current local charges, before being applied by the LEC to any toll or nonregulated charges on the billing, unless the customer pays

the entire amount past due or more for regulated services. In that case, the Commission's rule proposes that any amount over the amount past due shall be applied first to current local charges.

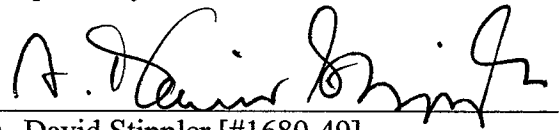
The ITA respectfully submits that a portion of the Commission's proposed rule that states "... unless the customer pays the entire amount past due or more for regulated services" should be slightly modified to read: "unless the customer pays the entire amount past due for regulated services *or more*." In cases where the partial payment covers the amount past due for regulated services *or more*, the LEC should have the option of either applying that payment to the entire amount past due and then the current local charges, or applying the partial payment to the past due and current local charges first and then to past due and current toll charges, as the current rule requires.

Some of the ITA member companies' systems either apportion partial payments to local services first or to toll services first. Such systems cannot determine whether a partial payment covers the entire amount past due or just a portion of it. As a consequence, the ITA has accordingly proposed "permissive" language (i.e., the LEC *may* apportion . . . ) to address these particular member companies' systems in handling partial payments.

It is important to note that the Commission's rule for application of partial payments on a bill (Rule 3(e)) just became effective in February of 2003. Many LECs were required to alter their systems to implement that rule that the Commission is now proposing to change again. The ITA respectfully submits that LECs should not have to redo their systems again, especially so soon after the prior rulemaking amended this rule.

In submitting these proposed modifications to proposed new Rule 10(g), the ITA assumes that all previous waivers granted to various ILEC numbers with regard to existing Rule 10(e) shall remain in effect as to proposed Rule 10(g) on and after its effective date.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "A. David Stippler", written over a horizontal line.

A. David Stippler [#1680-49]

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## **EXHIBIT A**

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### **TITLE 170 INDIANA UTILITY REGULATORY COMMISSION**

#### **Proposed Rule LSA Document #04-144**

#### **DIGEST**

Adds 170 IAC 4-1.2, 170 IAC 5-1.2, and 170 IAC 6-1.2 to establish new customer service rights and responsibility rules for electric, gas, and water utilities. Amends 170 IAC 7-1.3-2, 170 IAC 7-1.3-3, 170 IAC 7-1.3-8, 170 IAC 7-1.3-9, and 170 IAC 7-1.3-10 regarding telecommunications customer service rights and responsibilities. Amends 170 IAC 8.5-2 regarding sewage disposal service customer rights and responsibilities. Repeals 170 IAC 4-1-15, 170 IAC 4-1-16, 170 IAC 4-1-16.5, 170 IAC 4-1-16.6, 170 IAC 4-1-17, 170 IAC 5-1-15, 170 IAC 5-1-16, 170 IAC 5-1-16.5, 170 IAC 5-1-16.6, 170 IAC 5-1-17, 170 IAC 6-1-15, 170 IAC 6-1-16, and 170 IAC 6-1-17. Effective 180 days after filing with the secretary of state.

**170 IAC 7-1.3-2**

**170 IAC 7-1.3-3**

**170 IAC 7-1.3-8**

**170 IAC 7-1.3-9**

**170 IAC 7-1.3-10**

#### **SECTION 4. 170 IAC 7-1.3-2 IS AMENDED TO READ AS FOLLOWS:**

##### **170 IAC 7-1.3-2 Definitions**

**Authority:** IC 8-1-1-3

**Affected:** IC 8-1-2-1

Sec. 2. The following definitions apply throughout this rule:

- (1) "Applicant" means any person, ~~company, or designated agent~~ who seeks to become a customer for basic residential ~~or small business~~ telephone services.
- (2) "Basic local service" means the provision to a customer of an access line that transmits two-way interactive switched voice or communication within a local calling area.
- (3) "Business days" means all days other than a:
  - (A) Saturday;
  - (B) Sunday;
  - (C) legal holiday as defined by statute; or
  - (D) day that the utility (or service provider) office is closed during regular business hours.
- (4) "Clear and conspicuous notification" means notice that would be apparent to a reasonable consumer.
- (5) "Commission" means the Indiana utility regulatory commission.
- (6) "Competitive local exchange carrier" or "CLEC" means a local service telephone utility that provides telephone service to customers in the geographic territory served by the local exchange and does not qualify as an ~~incumbent local exchange carrier~~ ILEC under subdivision (9). (10).
- (7) "Customer" means the following:
  - (A) Any person that requests and obtains residential telephone service and is responsible for the **following**:

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- (i) The payment of charges.
  - (ii) Compliance with filed tariffs. and
  - (iii) Compliance with Rules of the utility.
- ~~(B) Any business or institutional entity, whether an individual, partnership, corporation, association, or other business or institutional form that:~~
- ~~(i) does or will operate with four (4) or fewer single access lines;~~
  - ~~(ii) requests and obtains telephone service for occupational, professional, or institutional purposes; and~~
  - ~~(iii) is responsible for the payment of charges, compliance with filed tariffs, and rules of the utility.~~
- (C) Any customer whose service has been temporarily disconnected shall continue to be a customer for purposes of this rule until such time as service is permanently disconnected and the customer must reapply for new service.
- (8) "Deniable charges" means charges for basic local service. Delinquency in payment of deniable charges may result in disconnection of basic local service.
- (9) "Direct Debit Payment Option" means an enrollment by an applicant or customer with a LEC for purposes of making a deposit or payment for telephone services whereby the LEC would directly debit the deposit or monthly charges from the applicant's or customer's bank or credit card as necessary.
- ~~(9)~~**(10) "Disconnection" means the any termination or discontinuance of utility service.**
- ~~(9)~~~~(10)~~**(11) "Incumbent local exchange carrier" or "ILEC" means a local service telephone utility that provides telephone service to customers in the geographic territory served by the local exchange and that:**
- (A) on February 8, 1996, provided telephone exchange service in such area and was deemed to be a member of the exchange carrier association under 47 CFR 69.601(b); or
  - (B) is a person or entity that on or after February 8, 1996, became a successor or assignee of a member described in clause (A).
- ~~(11)~~**(12) "Late payment charge" means the one-time penalty assessed by a utility on a customer's account whenever the account becomes delinquent.**
- ~~(10)~~~~(12)~~~~(13)~~**"Local exchange carrier" or "LEC" means a local serving telephone utility that provides telephone service to customers in the geographic territory served by the local exchange, and excluding those services provided pursuant to a CTA issued for a radio common carrier or commercial mobile radio service.**
- ~~(11)~~~~(13)~~~~(14)~~**"Long distance service" or "toll service" means the transmission of two-way interactive switched voice communication between local exchange areas for which charges are made on a per-unit basis.**
- ~~(12)~~~~(14)~~~~(15)~~**"New service provider" means a service provider that did not bill the customer for service during the service provider's last billing cycle. The term includes only providers that have continuing relationships with the customer that will result in periodic charges on the customer's bill unless the service is subsequently canceled.**
- ~~(13)~~~~(15)~~**(16) "Nondeniable charges" means charges for toll service and unregulated telecommunications services. Delinquency in payment of nondeniable charges shall not result in disconnection of basic local service.**
- ~~(14)~~~~(16)~~~~(17)~~**"Temporary disconnection" means a disconnection that has not yet resulted in the customer's account being permanently removed from the telephone provider's network.**
- ~~(15)~~~~(17)~~~~(18)~~**"Utility" means any public utility (as defined in IC 8-1-2-1) or municipal utility (as defined in IC 8-1-5-1-40) that furnishes telephone service to the public under the jurisdiction of the commission.**
- (Indiana Utility Regulatory Commission; 170 IAC 7-1.3-2; filed Aug 7, 2002, 10:05 a.m.; 25 IR 4066, eff one hundred eighty (180) days after filing with the secretary of state or January 1, 2003, whichever is later; errata, 26 IR 1565; errata, 26 IR 2375)*

SECTION 5. 170 IAC 7-1.3-3 IS AMENDED TO READ AS FOLLOWS:

### **170 IAC 7-1.3-3 Creditworthiness of residential customer; deposit; refund**

**Authority: IC 8-1-1-3**

**Affected: IC 8-1-2-4; IC 8-1-2-88; IC 32-34-1**

Sec. 3. (a) Each A LEC shall determine the creditworthiness of applicants or customers in an equitable and nondiscriminatory manner:

- (1) without regard to: the

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- (A) race;
  - (B) color;
  - (C) creed;
  - (D) religion;
  - (E) sex;
  - (F) national origin; or
  - (G) marital status; of the applicant or customer, or the economic character of the area wherein the applicant or customer resides or operates; and
  - (H) receipt of public assistance; or
  - (I) the economic character of the area wherein the applicant or customer resides or operates; and
- (2) solely upon the credit risk of the individual applicant or customer without regard to the:
- (A) collective credit reputation of the area in which the applicant or customer resides or operates; and
  - (B) credit history of any other individual residing in the household ~~or of the applicant or customer's spouse~~, except that if an individual living in the same household other than the applicant or customer is proven to have incurred an unpaid bill for telephone service at the same address, or is an active user on an existing account at the same address for which payment has not been made, that individual's credit history shall be considered in granting new service. The surviving spouse, however, shall be able to utilize the good credit of their deceased spouse when transferring service to their name.
- (b) Each new applicant for residential telephone service shall be deemed creditworthy and shall not be required to make a cash deposit as a condition of receiving basic local service if the applicant satisfies either of the following criteria:
- (1) The applicant has been a customer of a public or municipal utility in the United States within the last two (2) years, and the applicant:
- (A) owes no outstanding bills for service rendered within the past four (4) years by such utility;
  - (B) during the last twelve (12) consecutive months that the service was provided, did not have more than two (2) bills that were delinquent to such utility or, if service was rendered for a period for less than twelve (12) months, did not have more than one (1) delinquent bill in such period; and
  - (C) within the last two (2) years did not have a service disconnected by such utility for nonpayment of a bill for services rendered by that utility.
- (2) The applicant has not been a customer of a utility during the previous two (2) years and any of the following criteria are met:
- (A) The applicant either has been employed by:
    - (i) his or her present employer for two (2) years;
    - (ii) his or her present employer for less than two (2) years, but has been employed by only one (1) other employer during the past two (2) years; or
    - (iii) the present employer for less than two (2) years and has no previous employment due to recently:
      - (AA) graduating from a school, university, or vocational program; or
      - (BB) being discharged from military service.
  - (B) The applicant either:
    - (i) owns or is buying his or her home; or
    - (ii) is renting a home or an apartment and has occupied the premises for more than two (2) years.
- (b) A LEC may require a residential service applicant or customer to satisfactorily establish his or her financial responsibility (creditworthiness). The applicant or customer may be required to provide sufficient documentation that would clearly establish the identity of the applicant or customer. The LEC may require a deposit or other reasonable guarantor to secure payment of bills before providing local exchange service if the applicant or customer is not deemed creditworthy because the applicant or customer:
- (1) does not meet or exceed the predetermined minimum credit score selected by the LEC using a credit scoring system as provided in the LEC's tariff; or
  - (2) has failed to pay for past due telephone service furnished to him or her at the same or at another address in any state within the past four (4) ~~six~~ (6) years.



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In lieu of a deposit or a reasonable guarantor, the LEC may offer and the customer may agree to be enrolled in a Direct Debit Payment Option.

(c) A bill for one (1) class of service (such as commercial) shall not be transferred to a bill for another class of service (such as residential), nor shall a bill for one (1) form of utility service (such as telephone) be transferred to a bill for another form of utility service (such as electric). Local exchange service shall not be denied for nonpayment of bills for merchandise or other nonutility or unregulated services. Notwithstanding the above, if the owner of a sole proprietorship or a member of a partnership whose business has an unpaid final bill applies for residential service, such application shall be held until the unpaid final proprietorship or partnership bills are paid in full.

(d) If the applicant or customer fails to establish that he or she is creditworthy under subsection (b), the applicant or customer may be required to make a reasonable initial cash deposit. Such initial deposit shall not exceed one-sixth ( $\frac{1}{6}$ ) of the estimated annual billings for local service at the address at which service is rendered to the applicant or customer and shall be paid in full before installation of service, ~~Such subject to the provisions of section 11 of this rule; provided, however, that a deposit shall be based upon estimated local regulated telecommunications service charges only. If a deposit is greater than one hundred fifty dollars (\$150), the LEC shall advise the applicant or customer simultaneously with making a demand for a deposit that the applicant or customer may pay the deposit in equal installment payments over a period of no fewer than three (3) months, and service shall be connected upon receipt by the LEC of the first payment. For example, if the total deposit required by a LEC under this section is one hundred eighty dollars (\$180), the applicant or customer could make three (3) payments of sixty dollars (\$60) over a three (3) month period, and service would be connected after the first sixty dollar (\$60) payment.~~ The applicant or customer shall not be required to make any advanced payments in addition to or in lieu of a deposit required by this rule in order to receive service. An initial deposit made by a customer shall be subject to reevaluation upon the request of either the LEC or the customer, based upon actual charges for services rendered, at any time after service has been provided.

(1) As an alternative to the deposit, the LEC may offer and the applicant or customer may accept a direct debit payment option in lieu of a deposit.

(d) (e) The utility LEC may elect to accept a written guarantee, signed by a third party guarantor acceptable to the utility LEC within its discretion, of payment for all telephone service rendered or requested to be rendered to the applicant or customer. The guarantor may terminate the guarantee upon thirty (30) days prior written notice. Said The guarantee shall be in full force and effect up to and including the date the guarantee shall terminate, and the guarantor shall be obligated, as provided in the written guarantee, respecting the payment of the amount of the applicant's applicant or customer's bill on the date of termination. A guarantee shall terminate when the customer submits satisfactory payment for a period of either:

- (1) nine (9) consecutive months; or
- (2) ten (10) out of any twelve (12) consecutive months.

(e) (f) If the utility LEC requires a cash ~~deposit~~ deposit or a written guarantee or a direct debit payment option as a condition of providing service, the utility LEC shall advise the applicant or customer of the reason upon which it the LEC bases its decision and provide the applicant or customer with an opportunity to rebut such the facts and show other facts demonstrating creditworthiness.

(f) (g) The LEC may require a ~~present an existing~~ customer to make a reasonable cash deposit, ~~or an additional deposit or, if available from the LEC, enroll in a direct debit payment option~~ in cases where a deposit has been made ~~when and exhausted under this rule, under any of the following circumstances:~~

- (1) The customer has been mailed disconnect notices for:
    - (A) two (2) consecutive months; or
    - (B) any three (3) months within the preceding twelve (12) month period.
  - (2) The service to the customer has been disconnected within the past forty-five (45) days for nonpayment.
- In such cases, notice of the need for a deposit or enrollment in a direct debit payment option shall be in writing, and the

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customer shall be given ten (10) business days from the mailing date of the notice within which to make said the deposit or select the direct debit payment option. When the service has been disconnected within the past four (4) years pursuant to under section 11 of this rule, the deposit shall be provided before the service will be reconnected. The total amount of all deposits required for local service pursuant to under this section may not exceed an amount equal to one-sixth ( $\frac{1}{6}$ ) of the annualized estimated billings for local service to the customer at the address at which service is rendered. The applicant or customer shall not be required to make any advanced payments in addition to or in lieu of a deposit required by this rule.

~~(g)~~ (h) The LEC shall treat customers who have filed bankruptcy under federal law in accordance with the protective provisions of 11 U.S.C. 366, effective October 22, 1994.

~~(h)~~ (i) Requirements for interest upon a deposit shall be as follows:

(1) A deposit held more than thirty (30) days shall earn interest from the date of deposit. Beginning on the effective date of this rule, the rate of interest shall be set by the commission based upon the then existing rate for one (1) year United States treasury bills. The interest rate will be rounded to the nearest one-half ( $\frac{1}{2}$ ) of one percent (1%). In December of each year, the commission shall issue a general administrative order establishing the interest rate for the next calendar year that shall be paid on all deposits held during all or part of the subsequent year.

(2) The deposit shall not earn interest after the date ~~it~~ the deposit is mailed or personally delivered to the customer, or otherwise lawfully disposed of as provided in subsection ~~(i)(6)~~ (j)(6).

~~(i)~~ (j) Requirements for refunds shall be as follows:

(1) Any deposit and accrued interest shall be promptly refunded to the customer without the customer's request when the customer submits satisfactory payment ten (10) out of any twelve (12) consecutive months without late payment.

(2) A statement of accounting for each transaction affecting the deposit and interest shall accompany refunds of deposits or accrued interest issued under this section.

(3) Following a customer requested termination of service, the LEC shall do the following:

(A) Apply the deposit, plus accrued interest, to the final bill. or

(B) upon specific request from the customer, Refund the any remaining deposit, plus accrued interest, within fifteen (15) business days after payment of the final bill.

(4) Each A LEC shall maintain a record of each applicant or customer making a deposit that shows the following:

(A) The name of the customer.

(B) The current mailing address of the customer.

(C) The amount of the deposit.

(D) The date the deposit was made.

(E) A record of each transaction affecting such the deposit.

(5) Each A customer shall be provided a written receipt from the LEC at the time the customer's deposit is paid in full or when any time the customer makes a cash partial payment. The LEC shall provide a reasonable method by which a customer, who is unable to locate his or her receipt, may establish that he or she is entitled to a refund of the deposit and payment of interest thereon.

(6) Any deposit made by the applicant or customer to the LEC (less any lawful deductions to be refunded), or any sum the LEC is ordered to refund for telephone services that has remained unclaimed for one (1) year after the LEC has made a diligent effort to locate the customer who made such the deposit or the heirs of such the customer, shall be presumed abandoned and treated in accordance with IC 32-34-1-20(e). IC 32-34-1 et seq.

(7) A deposit may be used by the LEC to cover any unpaid balances owed the LEC following disconnection of any service under section 11 of this rule, provided, however, that any surplus be returned to the customer as provided in this subsection. section.

(8) Establishment of credit by cash deposit shall not relieve a customer from complying with the commission's rules for prompt payment of bills.

~~(k) A deposit shall not be applied to satisfy an applicant or customer's bill, prior arrearage, or outstanding indebtedness that is greater than four (4) years old; however, a LEC may pursue the unpaid balances via collections~~

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~~or other means provided by applicable law.~~

~~(l) At the end of every year of service, if the deposit plus interest is not refunded to the customer, the LEC shall automatically refund the accrued interest on the deposit to the customer by crediting the customer's account and stating this credit clearly on the customer's next regular bill.~~

(m) A customer who fails to pay a bill by the time specified by the regulations of the LEC and commission regarding the prompt payment of bills, and who further fails to pay the bill within a reasonable period after presentation of a disconnection of service notice for nonpayment, may be required to pay the bill and to reestablish credit by making a deposit under this rule. *(Indiana Utility Regulatory Commission; 170 IAC 7-1.3-3; filed Aug 7, 2002, 10:05 a.m.: 25 IR 4067, eff one hundred eighty (180) days after filing with the secretary of state or January 1, 2003, whichever is later; errata filed Oct 8, 2002, 12:54 p.m.: 26 IR 382)*

SECTION 6. 170 IAC 7-1.3-8 IS AMENDED TO READ AS FOLLOWS:

### **170 IAC 7-1.3-8 Customer complaints to the utility**

**Authority:** IC 8-1-1-3; IC 8-1-2-34.5

**Affected:** IC 8-1-2

Sec. 8. (a) **A An applicant or** customer may complain at any time to a utility about any bill, security deposit, disconnection notice, or any other matter relating to installation or service and may request a conference with the utility thereon. ~~Sueh~~ **The** complaints may be made in person, by telephone, in writing, or by completing a **written or electronic** form available from the utility. ~~at its business offices.~~ A complaint shall be considered filed upon receipt by the utility, except mailed complaints shall be considered filed two (2) calendar days after the postmark date. In making a complaint or request for conference, **the applicant or** customer shall state, at a minimum, **the following:**

- (1) His or her name.
- (2) **The** service address.
- (3) ~~His or her~~ telephone number. **and**
- (4) The general nature of his or her complaint.

(b) Upon receiving each such complaint or request for conference, the utility shall take the following actions:

(1) Immediately notify **a an applicant or** customer that any undisputed portion of a bill shall be paid by the date due in order to avoid disconnection of service in accordance **with** section 11 of this rule.

(2) Promptly, thoroughly, and completely investigate ~~sueh~~ the complaint in good faith, attempt to confer with the **applicant or** customer when requested, and notify the **applicant or** customer of ~~its~~ **the utility's** proposed disposition of the complaint. During the investigation, no collection action shall be taken for items that are being disputed, and there shall be no negative impact on **the applicant or** customer's credit rating.

(3) Without the **applicant or** customer's permission, the utility shall not disconnect, remove, or restrict any service that is the subject matter of the complaint while investigating the complaint or making a good faith attempt to resolve the complaint.

(4) Charges that are disputed by the **applicant or** customer shall not be treated as delinquent while an investigation is pending.

(5) After investigation, the utility may rebill the disputed charges in the next billing cycle if the investigation determined that the charges were appropriate; ~~however, the utility shall not assess any late payment charge that may have accrued while the investigation was pending~~ **any late payment charges that may have been assessed while the investigation was pending shall be adjusted accordingly upon resolution of the dispute.**

(6) If the utility's proposed disposition is not in the **applicant or** customer's favor, the utility shall notify the **applicant or** customer of ~~sueh~~ the disposition in writing if the complaint was made in writing. If the utility's proposed disposition is not in the **applicant or** customer's favor, the utility shall notify the **applicant or** customer in writing or orally, if the complaint was made orally. **A utility shall direct its personnel engaged in contact with an applicant or customer to inform/facilitate the applicant's or customer's request, if he or she expresses dissatisfaction with the decision of**

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~~the personnel, of the right~~ to have the problem considered and acted upon by supervisory personnel of the utility. A utility shall further direct ~~the such~~ supervisory personnel to ~~facilitate~~~~notify~~ the applicant's or customer's request ~~who expresses dissatisfaction with the decision of the supervisory personnel of the right~~ to have the problem reviewed by the commission's consumer affairs division and shall furnish him or her the business address and telephone number of the commission. The notification shall advise the customer or applicant that if he or she is dissatisfied with the telephone company's disposition, the customer or applicant may, within twenty-one (21) days, file a complaint with the commission's consumer affairs division (~~pursuant to~~ **(under** section 9 of this rule). ~~Such~~ The notification shall include contact information for the commission, including the commission's mailing address, toll-free complaint number, and local telephone number. **The payment of a deposit as requested by the utility shall not foreclose or in any manner affect the applicant or customer's right to appeal under IC 8-1-2-34.5 or other applicable law.**

(c) If at any time the **applicant or** customer files a complaint with the commission regarding a dispute with a utility, the procedures set forth in section 9 of this rule shall apply. Any disconnection of the **applicant or** customer's service shall be governed by section 11 of this rule.

(d) ~~Each~~ **A** utility shall retain a written record of complaints and requests for conferences for at least eighteen (18) months after the complaint or request for conference is made. ~~Such~~ **The** records shall be maintained at the office or branch office of the utility or in the respective department office thereof where ~~such the~~ complaints were received or any conferences were subsequently held. ~~Such~~ **The** written records are to be readily available upon request by the:

- (1) concerned **applicant or** customer; ~~the~~
- (2) **applicant or** customer's agent possessing written authorization; or ~~the~~
- (3) commission.

(e) ~~Each~~ **A** utility shall, at the request of the commission, submit a report covering the previous twelve (12) month period to the commission that shall state and classify **the following**:

- (1) The number of complaints made to the utility ~~pursuant to~~ **under** this rule.
- (2) The general nature of the subject matter thereof.
- (3) How the complaint was received. and
- (4) Whether a commission review was conducted thereon.

*(Indiana Utility Regulatory Commission; 170 IAC 7-1.3-8; filed Aug 7, 2002, 10:05 a.m.: 25 IR 4070, eff one hundred eighty (180) days after filing with the secretary of state or January 1, 2003, whichever is later)*

SECTION 7. 170 IAC 7-1.3-9 IS AMENDED TO READ AS FOLLOWS:

### **170 IAC 7-1.3-9 Customer complaints to the commission**

**Authority:** IC 8-1-1-3; IC 8-1-2-34.5

**Affected:** IC 8-1-2-34.5; IC 8-1-2-88

Sec. 9. (a) An individual or entity may informally complain to the commission's consumer affairs division with respect to any matter within the jurisdiction of the commission. ~~Such~~ **The** complaints may be made in person, by telephone, in writing, or by completing a **written or electronic** form available from the consumer affairs division. A complaint shall be considered filed upon receipt by the commission, except mailed complaints shall be considered filed as of the postmark date. In making a complaint, the **applicant or** customer shall state, at a minimum, **the following**:

- (1) His or her name.
- (2) The service address.
- (3) His or her telephone number. and
- (4) The name of the utility involved.
- (5) The general nature of his or her complaint.

(b) Without the **applicant or** customer's permission, the utility shall not disconnect, remove, or restrict any service that

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is the subject matter of the complaint while any commission review or investigation of ~~such~~ the complaint is pending. The **applicant or** customer shall continue to pay all undisputed charges. In those instances when the **applicant or** customer and the utility cannot agree as to what portion of a bill is undisputed, the **applicant or** customer shall pay on the disputed bill an amount equal to the **applicant or** customer's average bill for the twelve (12) months immediately preceding the disputed bill. In those cases where the **applicant or** customer has received fewer than twelve (12) bills, the **applicant or** customer shall pay an amount equal to one-twelfth ( $1/12$ ) of the estimated annual billing for service to be rendered to the **applicant or** customer.

(c) If the **applicant or** customer is dissatisfied with a utility's notice of its ~~the~~ utility's proposed disposition of the complaint as provided in section 8 of this rule, the customer or applicant may, within twenty-one (21) days after the postmark date of the notice, file a ~~consumer~~ **an informal** complaint with the commission's consumer affairs division.

(d) Upon receiving a ~~consumer~~ **an informal** complaint, the following actions shall be taken:

- (1) The utility shall be notified that a complaint has been made.
- (2) The complaint shall be investigated.
- (3) The **applicant or** customer and the utility shall be notified of the decision made on the complaint in accordance with applicable law.

(e) Requirements for an informal review are as follows:

(1) The **applicant or** customer or the utility may make a written request that a decision made pursuant to ~~under~~ subsection (d) be reviewed informally by the consumer affairs director or designee. ~~Such~~ The written request shall be made within fourteen (14) days of the decision. The records of the commission relating to ~~such~~ the reviews shall be kept in a systematic order.

(2) Upon receiving a request for an informal review, the consumer affairs director or designee shall provide an informal review ~~within thirty (30) days. in a timely manner~~ **within forty-five (45) days**. The review shall consist of not less than a prompt and thorough investigation of the dispute and shall result in a written decision to be mailed to the **applicant or** customer and the utility. ~~within thirty (30) days after its receipt of the customer's request.~~ Upon request by either party or the consumer affairs director or designee, the parties shall be required to meet and confer to the extent and at ~~such~~ a place as the consumer affairs director or designee ~~may consider~~ **considers** appropriate.

(f) The **applicant or** customer may make a written request that the commission investigate the disposition of the informal review. ~~Such~~ The written request shall be made within fourteen (14) ~~twenty (20)~~ **fourteen (14)** days of the consumer affairs division's notice of disposition. ~~Prior to~~ **Before** entering an order upon a commission investigation, the commission shall afford the **applicant or** customer and the utility notice and an opportunity to be heard.

(g) Without the **applicant or** customer's permission, the utility shall not disconnect, remove, or restrict any disputed service until at least ~~fourteen (14)~~ **twenty (20)** days have elapsed from the postmark date of the consumer affairs ~~division~~ **division's** disposition or the commission's order upon investigation, if any.

(h) The time frames provided in this section may be extended at the discretion of the consumer affairs division, to the extent that the delay in resolving the customer's complaint has been caused by the LEC. (Indiana Utility Regulatory Commission; 170 IAC 7-1.3-9; filed Aug 7, 2002, 10:05 a.m.: 25 IR 4071, eff one hundred eighty (180) days after filing with the secretary of state or January 1, 2003, whichever is later)

SECTION 8. 170 IAC 7-1.3-10 IS AMENDED TO READ AS FOLLOWS:

### **170 IAC 7-1.3-10 Customer payments**

Authority: IC 8-1-1-3

Affected: IC 8-1-2-4; IC 8-1-2-88

Sec. 10. (a) Except in cases where fraudulent or unauthorized use of utility service is detected and the LEC has reasonable grounds to believe the customer is responsible for the use, when a residential customer cannot pay an

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undisputed bill or the undisputed portions of a disputed bill in full, the LEC shall continue to serve the customer or shall reconnect the customer if the customer and the LEC agree on a reasonable portion of the outstanding bill to be paid immediately. The manner in which the balance of the outstanding bill will be paid (the "payment arrangement") shall be made in accordance with the following guidelines:

(1) If The customer shows just cause for his or her inability to pay deniable charges (financial hardship shall constitute just cause), and the customer pays a reasonable portion of such the amount, not less than \$25.00 but not to exceed in excess of the greater of either twenty dollars (\$20) or twenty-five percent (25%) one-third ( $\frac{1}{3}$ ) of all amounts due for deniable charges (unless the customer agrees to a greater portion). Failure to make timely payments may lead to immediate suspension of local service.

(2) In deciding on the reasonableness of a particular agreement, the LEC shall consider the following:

(A) The customer's ability to pay.

(B) The size of the unpaid balance.

(C) The customer's payment history and length of service.

(D) The amount of time the debt has been and the reasons why the debt is outstanding.

(E) The customer:

(i) agrees to pay:

(AA) the balance of all amounts due in equal monthly installments; and

(ii) agrees to pay (BB) all undisputed future bills for local service as they become due; and

(iii) (ii) has not breached any similar agreement with the LEC made pursuant to under this section in the last twelve (12) months.

(3) The payment arrangement shall provide the customer with adequate opportunity to apply for and receive the benefits of any available public assistance program the Lifeline/LinkUp program.

(4) The payment arrangement is subject to amendment upon the customer's request if there is a change in the customer's financial circumstances outside the customer's control.

(5) The LEC may add to the outstanding bill a late payment charge not to exceed the amount set pursuant to section 6(d) under section 6(c) of this rule.

(6) Where a customer subscribes to a bundle or package service, including deniable charges, that is billed at one flat rate, the customer shall be required to pay the full amount of the charge by the due date stated on the bill. If the customer with the bundle or package service fails to pay such billing, the LEC may, after serving proper notice as provided for in these rules, disconnect the customer. If the customer wishes to reconnect the bundle or package service, the LEC may require the full amount to be paid plus a deposit or additional deposit, or enroll in a direct debit payment option.

(b) The terms of any payment arrangement made pursuant to under this section shall be put in writing by the LEC and sent by mail to the customer.

(c) Only one (1) late payment charge may be assessed against the charges applicable to any given month.

(d) If the customer does not meet any of the conditions in subsection (a), the LEC may, but is not obligated to, enter into subsequent payment arrangements with the customer.

(e) If a customer makes a partial payment on a bill, the LEC shall first apply that payment to any deniable charges. A partial payment may only be applied to nondeniable charges when all deniable charges have been paid in full.

(e) The LEC shall reconnect service to a customer that has been temporarily disconnected as soon as reasonably possible but at least within one (1) working business day after the LEC is requested to do so if the customer has satisfied the requirements of this rule.

(f) A LEC may charge a reasonable reconnection charge for temporary disconnections not to exceed the charge approved by the commission in the LEC's filed tariffs; however, if a temporary disconnection results in the permanent removal of the account and the applicant or customer wishes to reconnect service, normal connect

## **EXHIBIT A**

**charges for new service as defined in the LEC's filed tariffs shall apply. A LEC shall inform its customers of the reconnection fee under section 5 of this rule.**

**(g) Partial payments applied toward any past due amount on a bill or on the balance due on a disconnection notice shall be apportioned to past due regulated local service charges, then to any current local charges, before being applied by the LEC to any toll or nonregulated charges, unless the customer pays the entire amount past due ~~or more~~ for regulated services or more. In that case, the LEC may apportion the partial payment to the entire amount past due, and any amount paid over the amount past due shall be applied first to current local charges. (Indiana Utility Regulatory Commission; 170 IAC 7-1.3-10; filed Aug 7, 2002, 10:05 a.m.: 25 IR 4072, eff one hundred eighty (180) days after filing with the secretary of state or January 1, 2003, whichever is later)**

**SECTION 13. THE FOLLOWING ARE REPEALED: 170 IAC 4-1-15; 170 IAC 4-1-16; 170 IAC 4-1-16.5; 170 IAC 4-1-16.6; 170 IAC 4-1-17; 170 IAC 5-1-15; 170 IAC 5-1-16; 170 IAC 5-1-16.5; 170 IAC 5-1-16.6; 170 IAC 5-1-17; 170 IAC 6-1-15; 170 IAC 6-1-16; 170 IAC 6-1-17.**

**SECTION 14. SECTIONS 1 through 13 of this document take effect one hundred eighty (180) days after filing with the secretary of state.**

### ***Notice of Public Hearing***

*Under IC 4-22-2-24, notice is hereby given that on September 22, 2004 at 10:30 a.m., at the Indiana Government Center-South, 302 West Washington Street, Training Center Room 10, Indianapolis, Indiana the Indiana Utility Regulatory Commission will hold a public hearing on proposed amendments to the customer service rights and responsibilities rules for utilities. Copies of these rules are now on file at the Indiana Government Center-South, 302 West Washington Street, Room E306 and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.*

William D. McCarty  
Commission Chairman  
Indiana Utility Regulatory Commission

**#909218**